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court, is directly in point, and agrees with the principal case, *State v. Lodge*, 33 Atl. Rep. 312 (Del.).

MARRIED WOMEN — DAMAGES FOR IMPAIRED CAPACITY TO LABOR. — Though the enfranchisement of woman from her common law bondage has been wellnigh completed by modern statutes, yet the process has gone on so intermittently that the courts are often called upon to fill up the intervals, and, by judicious interpretation of statutes, to systematize and complete the whole work. A recent decision of this sort by the Massachusetts court has not only attracted wide attention among the profession, but has been given public prominence in the columns of the daily press. *Harmon v. Old Colony R. R. Co.*, 42 N. E. Rep. 505, is an authority for the principle that, in an action of tort brought by a married woman for personal injuries, her impaired capacity to labor may be considered in estimating damages. This decision seems a necessary consequence of the statutes which give a married woman the right to her earnings, and allow her to sue for them in her own name; and the result reached is by no means unprecedented, even in Massachusetts. *Jordan v. R. R. Co.*, 138 Mass. 425; *Smith v. R. R. Co.*, 23 S. W. Rep. 784 (Mo.); *Brooks v. Schwerin*, 54 N. Y. 343; *Fleming v. Town of Shenandoah*, 67 Iowa, 505.

All is not perfectly plain sailing, however; for it must be remembered that the husband, notwithstanding modern statutes, still has his action for the loss of his wife's services; and in order that there may not be a double recovery, their respective rights must be carefully distinguished. If the wife has recovered damages in one action for the loss to her attendant upon her impaired capacity to labor, the husband must not be allowed to recover in a later action for a loss which was not his, and for which satisfaction has already been given. However difficult it may be to divide the loss accurately, there can be little doubt on principle as to where the line should be drawn. So far as the injury to the wife disables her from performing household duties, the loss is the husband's and he alone can recover; so far as she is disabled from earning money in an outside employment, the damage is hers. This distinction has been clearly pointed out in many cases. See *Brooks v. Schwerin*, *supra*.

It would seem to follow that if the wife is engaged in no outside occupation, but confines herself to household duties, she should recover no damages of this nature. And it is so held. "The test of her right to damages for loss of time is whether she was in the employment of persons other than her husband, on her own account." *Fleming v. Town of Shenandoah*, *supra*. See also *R. R. Co. v. McGinnis*, 46 Kan. 199; *Filer v. R. R. Co.*, 49 N. Y. 47; *Thomas v. Town of Brooklyn*, 58 Iowa, 438. Yet even in cases where she is not at the time engaged in a separate employment it may be open to question whether the impairment of her earning power, in the abstract, should not be considered by the jury. Conversely, it has been held that, if the husband would recover for the loss of his wife's services, he must show that such a relation existed between them that he was entitled to those services. *R. R. Co. v. Dickey*, 41 Pac. Rep. 1070 (Kan.). The border line between household duties and outside labor is reached when the wife is employed in her husband's business establishment. In such cases, when she receives no wages, the services are assimilated to those rendered in the house-

hold and the husband is allowed to recover damages for their loss. *Street Ry. Co. v. Twiname*, 121 Ind. 375. When she receives regular wages from her husband, even though she could not enforce payment of them, they are hers when they are paid, the presumption is that they would have continued, and consequently, as hers is the loss, it would seem that she should be allowed to recover damages therefor. But the contrary has been held. *Blaehinska v. Howard Mission*, 62 N. Y. 130, 130 N. Y. 497.

After all, the general rule of law seems clear, and the only questions are practical ones for the jury. What damage has the wife suffered from the impairment of her capacity to carry on a separate employment? What damage has the husband suffered from the loss of her services in the household? It may be difficult at times to answer these questions satisfactorily. It is no easy matter to determine in every case just what constitutes a separate employment. (See the dissenting opinion of Lott, Ch. C., in *Brooks v. Schwerin*, *supra*.) And the position of the judge whose duty it is to instruct the jury in such a manner that they will carefully discriminate between the two elements of damage may well be no sinecure. But these are the every-day inconveniences necessarily incident to the law as a working system.

CAN A MURDERER ACQUIRE A TITLE BY HIS CRIME?—In *Riggs v. Palmer*, 115 N. Y. 506 (1889), the New York Court of Appeals passed upon the validity of a devise to a defendant who had murdered his testator to prevent a revocation of the will. The action was brought to have the devise cancelled and annulled. The court decreed "that the devise and bequest in the will to Elmer [Palmer, the defendant] be declared ineffective to pass the title to him; that by reason of the crime of murder committed upon the grandfather he is deprived of any interest in the estate left by him." In 4 HARVARD LAW REVIEW, 394, and 8 HARVARD LAW REVIEW, 170, it was suggested that a more satisfactory way of reaching the desirable result of this decision was to allow the devisee to take the legal title under the will, but to compel him to hold the property as constructive trustee for the heirs at law of the testator; thus avoiding the violence done to the plain letter of the Statute of Wills by reading into it a revocation clause.

In *Ellerson v. Westcott*, 42 N. E. Rep. 540 (N. Y.), an heir at law of the testator sued directly for a partition of lands devised to the defendant, who was alleged to have murdered her devisor. The court refused to entertain this form of action, and said that the plaintiff's only remedy was in equity to deprive the devisee of the benefit of her crime. While not expressly overruling *Riggs v. Palmer*, the court sharply distinguishes it from the present case in point of procedure. The following sentences are quoted from the opinion at page 542: "The devise took effect on the death of the testator, and transferred the legal title and right given her by the will. The relief which may be obtained against her is equitable and injunctive. The court in a proper action will, by forbidding the enforcement of a legal right, prevent her from enjoying the fruits of her iniquity. It will not and cannot set aside the will. That is valid, but it will act upon facts arising subsequent to its execution, and deprive her of the use of the property." From this, the New York court seems to have abandoned a position difficult to defend